

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 15-13790-GAO

PAUL GAUDREAU,  
Petitioner,

v.

MICHAEL THOMPSON,  
Respondent.

ORDER  
July 20, 2016

O'TOOLE, D.J.

On November 5, 2015, Paul Gaudreau filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also filed a motion seeking a stay and abeyance of the petition to permit him to exhaust an unspecified claim of ineffective assistance of counsel.

A federal court may not consider a § 2254 petition unless the petitioner has exhausted state court remedies for all claims raised in the petition. 28 U.S.C. § 2254(b)(1). Generally, if a petitioner files a petition containing both exhausted and unexhausted claims (i.e., one that is “mixed”), a federal court may (1) dismiss the petition in its entirety; (2) permit the petitioner to dismiss the unexhausted claims and proceed only with the exhausted claims; or (3) in some “limited circumstances” stay the petition and hold the petition in abeyance while the petitioner returns to state court to exhaust his previously unexhausted claims. See Rhines v. Weber, 544 U.S. 269, 273–74 (2005). The third option, a stay of proceedings, is appropriate only if the petitioner “had good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” Id. at 277–78.

The petitioner fails to establish that a stay is warranted under Rhines. Although he refers to an ineffective assistance of counsel claim, he provides no information by which the Court can analyze the potential merit of the claim. Likewise, while there appears no indication that he engaged in intentionally dilatory litigation tactics, he does not advance any reasons for the purported failure to exhaust the claim.

Accordingly, the petitioner's Motion to Stay (dkt. no. 2) is DENIED and the respondent's Motion for a Scheduling Order (dkt. no. 22) is GRANTED. The petitioner shall file a memorandum of law in support of his petition on or before August 24, 2016. Respondent shall file his memorandum of law in opposition to the petition on or before September 28, 2016.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.  
United States District Judge